

Cartel Working Group

2016 - 2019 Work Plan

MISSION

The mandate of the Cartel Working Group (CWG) is to address the challenges of anti-cartel enforcement, including the prevention, detection, investigation and punishment of cartel conduct, both domestically and internationally, across the entire range of ICN members with differing levels of experience and resources. At the heart of antitrust enforcement is the battle against hardcore cartels directed at price fixing, bid rigging, market allocation and output restriction.

ORGANISATION

The CWG is co-chaired by the Netherlands Authority for Consumers and Markets, the South African Competition Commission and the Directorate General for Competition of the European Commission. It consists of two sub-groups:

Subgroup 1: Legal Framework ('SG1') is co-chaired by the Japan Fair Trade Commission and the Hungarian Competition Authority. It addresses legal and conceptual challenges of anti-cartel enforcement. The focus of the subgroup is examining policy-level issues of institutional and investigative frameworks for the detection and punishment of hardcore cartel conduct.

Subgroup 2: Enforcement Techniques ('SG2') is co-chaired by the Australian Competition and Consumer Commission and the Federal Anti-Monopoly Service of Russia. It aims to improve the effectiveness of anti-cartel enforcement by identifying and sharing specific investigative techniques and advancing the education and information sharing agenda of the CWG.

There are currently 64 member agencies in the CWG divided across the two subgroups which range from large authorities with significant experience in cartel enforcement to smaller or younger agencies with limited experience and differing resources at their disposal. In addition, NGAs from 31 jurisdictions participate in the work of the CWG.

LONG TERM GOALS

The CWG members seek to address the continuous challenges of anti-cartel enforcement, including the prevention, detection, investigation and punishment of cartel conduct. Through their participation in the work of the CWG, the members strive to achieve the following outcomes:

- Share views on the most effective enforcement tools in the fight against cartels (exchange of expertise between competition agencies with various levels of experience);
- Elaborate good/best practices in different areas of anti-cartel enforcement;
- Increase the awareness of new and developing competition agencies concerning the significance of the fight against hardcore cartels;
- Provide assistance to newer anti-cartel enforcement agencies; and
- Encourage new members to join the organization as well as enhance the involvement of NGAs.

Relevant information on the main activities of the CWG is disseminated through the annual Cartel Workshop, the drafting and updating of the various chapters of the Anti-Cartel Enforcement Manual and other written work products, the organisation of Enforcer Round Table Discussions by teleseminar, the Anti-Cartel Enforcement Templates and various ad-hoc papers, publications and conference calls.

2016 - 2019 STRATEGIC PLANS

The goal of the CWG for the period from 2016 to 2019 is to contribute actively to the advancement of anti-cartel enforcement across the entire membership (irrespective of the level of experience or resources available), by advocating improved cooperation between member agencies; promoting the dissemination and implementation of CWG work products; and encouraging broader engagement with the CWG's work, particularly from newer enforcement agencies and NGAs.

The CWG will strive to increase the number of its members and to offer a general discussion platform for both experienced and younger agencies in order to increase the cooperation between its members at both the management and working levels.

The CWG will also endeavour to engage agencies new to anti-cartel enforcement in the work of the group. Every effort will be made to focus the work products on issues that are relevant to all member agencies, including new agencies. Younger agencies or groups of agencies with common interests are encouraged to actively participate in the discussion of such topics. The CWG will also work to encourage increased involvement of NGAs in the work of the group.

In view of an overwhelmingly positive response from member agencies regarding the CWG's existing work, it is proposed that the CWG continue to develop its key work products in the 2016 – 2019 period, including organizing the annual Cartel Workshop, the Enforcer Round Table Discussions, the Anti-Cartel Enforcement Manual and other reports, and the Anti-Cartel Enforcement Template. Through further development of these key work products, the CWG will ensure the continued high quality, accessibility and usefulness of its output. In addition, these projects all relate to and support the ICN's cooperation initiatives.

While specific topics and types of future work will be discussed among the membership and evaluated for each annual work plan, the CWG has identified six primary areas for future initiatives.

1. Promote familiarity with, and use of, existing work product

The CWG will evaluate the implementation and use of its work products by member agencies, identify barriers to increased use, and encourage further dissemination of existing work. This may include a discussion series that revisits past work products (e.g. courses on the fundamentals of cartel enforcement by teleconference using existing work products such as Chapters of the Anti-Cartel Enforcement Manual). In addition, the CWG will work to cooperate with the ICN Advocacy Working Group for these purposes.

2. Expand existing work product

The CWG will revisit or update, as necessary, its existing work products which are of fundamental importance to members' anti-cartel enforcement practices and policies. Sample topics include the following: leniency programmes, basic investigative tools and techniques (e.g. enforcement cooperation, searches, interviewing, digital evidence gathering, etc.), sanctions, settlements and international cooperation. This may include updating Chapters of the Anti-Cartel Enforcement Manual, assessing whether there are additional chapters of the Anti-Cartel Enforcement Manual that members consider would be useful, and whether there are additional best practice or guidance documents that the ICN would benefit from in the context of anti-cartel enforcement. Such reassessment will aim to keep CWG work product relevant and encourage input from younger and new agencies.

3. Develop new practical guidance and avenues for exchanging effective enforcement practices

The CWG will continue to develop new practical guidance and experience sharing projects on important issues in anti-cartel enforcement. The CWG will consider new work product topics for the Anti-Cartel Enforcement Manual, other written work products, and roundtable discussions. Particular efforts will be made to encourage the participation of younger agencies. The CWG will be a forum for the discussion and evaluation of recent developments, emerging issues, and upcoming trends in the field of anti-cartel enforcement. To this end, the CWG will make additional relevant material accessible on the ICN website. The CWG will explore the synergies of collaboration between the ICN and other international organisations, such as the OECD. This may include the organisation of joint events.

4. Organise annual Cartel Workshops

The cartel workshops will present and discuss topics covered by CWG work products and significant emerging policy issues relevant to day-to-day enforcement techniques. Annual workshops will emphasise practical experience, and will include real life case examples and hypothetical scenarios. Workshop topics will be evaluated each year based on feedback to ensure relevance for, and participation from, a wide range of ICN members, including issues of particular interest to newer agencies. Examples of possible topics of annual workshops include the following: implementation of leniency programmes, enforcement cooperation, the interaction of public and private enforcement in deterring cartel conduct, detecting cartels outside of leniency programmes, dual-track criminal and civil/administrative regimes, determining penalties, settlements and compliance programmes.

5. Strengthen CWG working procedures

The CWG will:

- Encourage more ICN members to join the CWG and encourage increased levels of participation from members within the CWG;
- Explore new and creative ways to improve the accessibility of CWG updates and work product, including the consideration of the following:
 - Improving the CWG page on the ICN website;
 - Use of online discussions and webinars;
 - Periodic CWG updates (online or electronic newsletters);
 - Use of the ICN blog;
 - Translation of CWG work products; and
 - Web-based training tools (i.e. workshop materials).
- Include work of interest to NGAs and projects amenable to NGA participation.

6. Contribute to the broader work of the ICN

The CWG will continue to participate in, and contribute to, the broader work of the ICN including, the Annual Conference, the ICN Curriculum Project and regular updates to the ICN website. The CWG will cooperate with the ICN horizontal coordinator in the planning of its events. Cooperation with other ICN Working Groups on issues of common interest will also be considered.

Cartel Working Group

Sub Group 1

Annual Plan

2016 - 2017 Projects

Pursuant to its Mission and Long-Term Work Plan the CWG SG1 will work on the following projects during the 2016 - 2017 ICN year:

1. “Checklist for efficient and effective leniency programme”;
2. Update on “Setting of Fines for Cartels in ICN jurisdictions” (2008);
3. Webinars/call series on investigative tools and detection methods;
4. Webinars/call series on disclosure and discovery; and
5. Continuation of the Asia-Pacific friendly calls.

Responsible parties

The work will be co-ordinated by the SG1 co-chairs, the Japan Fair Trade Commission and the Hungarian Competition Authority.

Project 1 – “Checklist for efficient and effective leniency programme”

The end-product will list the legal and enforcement prerequisites to an effective and efficient leniency programme, such as the setting of thresholds to obtain leniency, the criteria for significant added value (SAV), the rewards for leniency cooperation, leniency programmes under administrative and criminal procedure, etc. Such a checklist would be particularly beneficial to younger agencies.

Project 1 – Milestones

This product will build on members’ experience and on the already existing materials of the ICN (including previous webinars on Leniency) and of OECD. The plan is to have a first draft exchanged among the project team (JFTC, GVH and DG Comp) by the end of June and exchanges between the CWG co-chairs to start before August 2016. The objective is to circulate it to the CWG membership for comments before the Cartel Workshop in October 2016 and to present and discuss it at the workshop in the autumn. NGAs may be also called to comment before finalizing the work product. The final product would be sent for adoption to the Steering Group before the 2017 ICN Annual Conference and then the adopted product would be presented at the annual conference.

June 2016	Preparation of first draft and exchanges on it among the project team
July 2016	Comments from CWG co-chairs
September 2016	Draft discussed with the membership (participation of the NGAs to be determined)
October 2016	Presentation and discussion at the Cartel Workshop
May 2017	Presentation of the final product at the 2017 Annual Conference

Project 2 – Update on “Setting of Fines for Cartels in ICN jurisdictions” (2008)

The original report on fines was published about eight years ago, and we have seen significant developments in fine-setting methodology since then. The focus in this project will be on i) updating the information in the 2008 report, and ii) adding information on actual examples of fine calculation, to the extent that is possible given confidentiality rules.

Project 2 – Milestones

Questionnaires for updating the report will be sent in the summer of 2016, and have a first draft of the work product exchanged among the member agencies and NGAs by February 2017. The objective is to finalize the product by March 2017 and to present it at the Annual Conference in 2017.

June-July 2016	Preparation of draft questionnaires and ask for comments from the CWG member agencies
August-September 2016	Circulate and collect questionnaires
October 2016	Discussion at the Cartel Workshop
October-December 2016	Draft the updated work product
January-February 2017	Ask for comments on the draft from the member agencies and NGAs
February-March 2017	Revise the draft and finalize
May 2017	Presentation of the final product at the 2017 Annual Conference Updating CWG ICN webpage with the product

Project 3 – Webinars/call series on investigative tools and detection methods

The webinars (maximum four) will give the opportunity for sharing ICN experience related to investigative tools with which evidence is collected. Many jurisdictions have investigative tools such as dawn raids, interviews, orders to produce documents, etc., but there are some differences among jurisdictions as to which tools are more important than others (some jurisdictions heavily depend on interviews, while others rely on voluntary cooperation by the companies concerned). This can be due to many factors, including differences in standard of proof, to what extent companies are cooperative and so on, and we would like to explore the experiences and challenges in this respect. The webinars will target specific issues and will be organised along the following lines:

- One webinar session on "Cartel leads/ informants: experiences, challenges and difficulties" (could be open to NGAs);
- One or two webinar sessions on "Challenges related to electronic searches in dawn raids - increasing sophistication of cartels -" (Agencies only);
- One or two webinar sessions on "Challenges related to evidence gathering after dawn raids and other investigative tools for cartel detection (Agencies only).

Project 3 – Milestones

June-July 2016	Determining the topics for the different sessions and establishing the programme of the call series
September –October 2016	Identify speakers and finalise programme
November 2016- March 2017	Organise call series discussions (three or four)
April 2017	Updating CWG ICN webpage with material
October 2017	Presentation of highlights at the Cartel Workshop

Potential dates of webinars: 16 Nov. 2016, 14 December 2016, 1 February 2017, 8 March 2017

Project 4 – Webinars/call series on disclosure and discovery

One webinar on "Disclosure and discovery issues". This webinar is open to NGAs and a continuation of the previous sessions on the Interplay between public and private enforcement. Last autumn, this subject triggered a significant number of participation from both agencies and NGAs, as damage claims is currently a highly topical issue.

Appropriate protection of leniency based information is a key to maintain the interest of potential leniency applicants to submit leniency applications and thereby the effectiveness of leniency programmes. At the same time some jurisdictions allow civil or criminal courts to request competition authorities (even in other countries or jurisdictions) to disclose leniency-based information. Exchange of experiences on how such conflicts are reconciled or solved.

Project 4 – Milestones

May-June 2016	Determining the topics
July 2016	Identify speakers and organise webinar
September 2016	Hold the webinar session
April 2017	Updating CWG ICN webpage with material
October 2017	Presentation of highlights at the Cartel Workshop

Potential date of the webinar: 14 September 2016

Project 5 – Continuation of the Asia-Pacific friendly calls

CWG SG1 will organise a series of webinars at the time friendly to ICN member agencies and NGAs in the Asia-Pacific region in collaboration with the project three and four.

The webinar series will consist of replay of some presentations of the project three and four and discussion to complement the two projects by facilitating participations in the discussion by member agencies and NGAs in the Asia-Pacific region. Presentations replayed will be selected in consideration of the situation of the Asia-Pacific region.

Project 5 – Milestones

Two or three calls in the period February - April 2017.

December 2016 - January 2017	Determining the topics for the different sessions and establishing the program of the call series
January-February 2017	Identify speakers and finalise program
February-April 2017	Organise the call series discussions
June 2017	Updating CWG ICN webpage with material
Autumn 2017	Presentation of highlights at the Cartel Workshop

Cartel Working Group

Sub Group 2

Annual Plan

2016 - 2017 Projects

Pursuant to its Mission and Long-Term Work Plan the CWG SG2 will work on the following projects during the 2016 - 2017 ICN year:

Project 1: Scoping study for new content for the “Anti-Cartel Enforcement Manual”

Project 2: The 2016 Cartel Workshop (Spain)

Project 3: “ICN framework for the promotion of the sharing of non-confidential information”

Project 4: Completion of the “Anti-Cartel Enforcement Template” updates

Project 5: Update of the “Compilation of “Good Practices”

Responsible parties

The work program will be co-ordinated by the SG2 co-chairs, the Australian Competition and Consumer Commission and the Federal Anti-Monopoly Service, Russia. Volunteers will be sought from the SG2 membership to assist with projects 1 and 5, while the Hungarian and Japanese competition authorities will maintain their close engagement with projects 3 and 4. A small group of competition authorities drawn from the CWG Co-Chairs have volunteered to assist with project 2 (South Africa, Colombia, DG Comp, Spain and Australia).

Project 1: Scoping study for new content for the “Anti-Cartel Enforcement Manual”

The Anti-Cartel Enforcement Manual is a compilation of the investigative approaches used by ICN Members possessing differing levels of experience. Each chapter explores techniques employed at various stages of anti-cartel enforcement and identifies approaches that have proven effective and successful.

The Manual includes practical discussions and tips based on member agency practices covering the following topics, organised by chapter: Searches, Raids and Inspections (2009); Drafting and Implementing an Effective Leniency Policy (2014); Digital Evidence Gathering (2014); Cartel Case Initiation (2010); Investigative Strategy (2008); Interviewing Techniques (2008); Cartel Case Resolution (2011); Cartel Awareness, Outreach & Compliance (2012); International Cooperation and

Information Sharing (2013); Relationships between Competition Agencies & Public Procurement Bodies (2015).

In 2016, SG2 proposes to scope whether (a) a further chapter in the manual would be beneficial to members and if so on what topic; and/or (b) whether it is timely to revisit and update the content of existing chapters (for instance, investigative strategy or interviewing techniques, both of which date back to 2008).

Project 1 – Milestones

June 2016	Seek volunteer participants from SG2 members and NGAs
July – August 2016	Undertake consultative survey, this will draw upon: <ul style="list-style-type: none"> • A review of the Anti-Cartel Enforcement Manual (assessing the need to revisit and update content) • The areas of future work identified by the Second Decade Survey.
Sept – October 2016	Compile report of consultative survey identifying priority areas of work for 2017-18 ICN year
November 2016	Report to SG2 membership
December 2016 – February 2017	Undertake preparatory work for 2017-18 drafting program.

Project 2: 2016 ICN Cartel Workshop (Spain)

The 2016 Annual Cartel Workshop will take place in Spain from 2 - 5 October 2016 at the Hotel Novotel, Madrid, Spain. The theme of the 2016 workshop is Enhancing Cartel Enforcement. Within this theme SG2 will offer sessions exploring:

- ways to enhance cooperation between competition authorities
- strategies and techniques for building an effective cartel team
- strategies to build a culture of compliance and
- the interface between public and private enforcement of competition laws.

The Workshop will be used to highlight existing CWG work products, including the Anti-Cartel Enforcement Manual. Preparations for the Workshop will be coordinated by the SG 2 Co-Chairs in partnership with the Spanish National Authority for Markets and Competition (CNMC). A small group of competition authorities drawn from the CWG Co-Chairs have also volunteered to assist with project 2 (South Africa, Colombia and DG Comp).

Project 2 – Milestones

June – August 2016	Formation of the workshop agenda, including the allocation of speakers. (note suggestions for sessions and feedback on previous workshops were sought in the 2016 ICN year, this information has been incorporated into the planning for the 2016 workshop)
June – September 2016	Logistics management (venue, website, materials etc.)
August - September	Presenters and Moderators to prepare and submit material for Workshop
2 – 5 October 2016	2016 ICN Cartel Workshop
November 2016	Feedback and review process

Project 3: Implement the ICN framework for the promotion of the sharing of non-confidential information

In 2015 the ICN CWG SG2 commenced work to establish a framework for the promotion of the sharing of non-confidential information to give agencies ‘a place to start’ in building stronger relationships and sharing information. The framework was designed to foster a “pick up the phone relationship” for improved cooperation for effective cartel enforcement by supporting member agencies to gain more experiences of information exchanges.

Project 3 – Milestones

2016-17 ICN year	<p>Encourage participation, maintain currency of registrar of participating agencies and encourage use of request procedure.</p> <ul style="list-style-type: none"> • Regular circulation of updated registrar for use by SG2 members and participating agencies • Promote during member calls, including through sharing experiences of the framework in application • Circulate relevant materials and implementation stories (where known)
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Project 4: Completion of the Anti-Cartel Enforcement Template update project

As the rules governing anti-cartel enforcement are constantly evolving, the Anti-Cartel Enforcement Templates that summarise the main features of each jurisdiction's rules and procedures (originally compiled in 2005) require constant updating. It is also necessary for new ICN members to complete Templates. In late 2015 the SG 2 Co-Chairs undertook to ensure that Anti-Cartel Enforcement Templates were updated or completed by SG 2 members. This project is ongoing in 2016. The SG 2 Co-Chairs will continue to encourage members to complete or update their templates and see that they are published to the Cartel Working Group page on the ICN website.

Project 4 – Milestones

2016-17 ICN year	<p>Encourage completion of updated template by members, maintain currency of website.</p> <ul style="list-style-type: none"> • Promotion during member calls as required • Circulate relevant materials
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Project 5: Update of the “Compilation of “Good Practices”

In 2011 the ICN CWG SG2 prepared a “Compilation of ‘Good Practices’ from the Anti-Cartel Enforcement Manual of the ICN Cartel Working Group”. Since 2011 some of the Manual Chapters have been revised and updated with new or reworded good practices. This project aims to complete the compilation with the new good practices defined between 2011 and 2016.

Project 5 – Milestones

June 2016	Seek volunteer participants from SG2 members and NGAs
July – August 2016	Undertake review of the <i>Anti-Cartel Enforcement Manual</i> to identify Good Practices for inclusion in updated Compilation
September 2016	Draft updated Compilation
October 2016	Undertake member consultation on draft Compilation, including as part of the ICN Cartel Workshop
November - December 2016	Finalise Compilation work product

PAST PROJECTS

Since inception in the ICN in 2004, the CWG has completed a large number of projects, including the following:

Annual Cartel Workshops:

Year	Location
2004	Sydney, Australia
2005	Seoul, South Korea
2006	The Hague, The Netherlands
2007	San Salvador, El Salvador
2008	Lisbon, Portugal
2009	Cairo, Egypt
2010	Yokohama, Japan
2011	Bruges, Belgium
2012	Panama City, Panama
2013	Cape Town, South Africa
2014	Taipei, Taiwan
2015	Cartagena, Colombia

Anti-Cartel Enforcement Manual:

1. Searches, Raids and Inspections (2009)
2. Drafting and Implementing an Effective Leniency Policy (2014)
3. Digital Evidence Gathering (2014)
4. Cartel Case Initiation (2010)
5. Investigative Strategy (2008)
6. Interviewing Techniques (2008)
7. Cartel Case Resolution (2011)
8. Cartel Awareness, Outreach & Compliance (2012)



9. International Cooperation and Information Sharing (2013)

10. Relationships between Competition Authorities and Public Procurement Bodies (2015)

[Click here for a complete list of Cartel work products](#)